

DISTRICT OF DELAWARE

Debtor

PRETRIAL AND TRIAL PROCEDURES

IT IS ORDERED as follows:

A. Five court days before the scheduled trial date, each party must:

- (1) serve upon all other parties by facsimile or same-day delivery proposed Findings of Fact and Conclusions of Law with supporting citations of authority;
- (2) pre-mark 4 copies of all exhibits with the exception of exhibits to be used solely for impeachment purposes (Plaintiff's exhibits shall be numbered, Defendant's exhibits shall be lettered, and joint exhibits shall bear roman numerals);
- (3) serve upon all other parties by same-day delivery one copy of the pre-marked exhibits, a list identifying all exhibits (with the exception of exhibits to be used solely for impeachment purposes) to be introduced at trial, and a copy of all summaries or compilations to be introduced under Fed. R. Evidence 1006; and

- (4) prepare a Stipulation as to all exhibits for which there is no objection as to authenticity.

B. Witnesses

Within five court days prior to trial, each party shall serve by facsimile or same-day delivery upon all other parties a list of all witnesses which they intend to call at trial. The persons so listed shall be called in the order in which they are listed, and shall each be available to testify at the trial. Leave to call witnesses out of order for reasons that could not reasonably be anticipated will be freely granted.

C. Appraisers

Any party who intends to offer appraisal testimony shall serve upon all other parties by facsimile or same-day delivery an affidavit or declaration by each appraiser which shall include, at a minimum:

1. The appraiser's qualifications as an expert;
2. The date the appraisal was performed, and the extent to which the property was inspected by the appraiser;
3. The appraiser's opinion as to the value of the subject property;
4. An outline of the reasons and basis for the appraiser's opinion.

The declaration shall be deemed the appraiser's direct testimony at the trial. However, the appraiser must be available to testify at the trial should any other party wish to interrogate him or her.

D. ALL PLEADINGS, LISTS AND OTHER DOCUMENTS SET FORTH IN PARTS A THROUGH C ABOVE SHALL BE LODGED WITH THE COURTROOM DEPUTY WITHIN FIVE COURT DAYS PRIOR TO THE DATE OF THE TRIAL. DO NOT FILE THESE DOCUMENTS.

E. Discovery

All discovery requiring a written response shall be served so as to give the served party or person sufficient time under the appropriate rule to respond at least 7 days before the deadline for filing any motions directed to discovery as indicated in the Scheduling Order. Unless the parties agree otherwise, no deposition shall be noticed or subpoena duces tecum served which would require the party to respond and/or appear within 7 days prior to the deadline for filing any motions directed to discovery.

Counsel may, by agreement, continue discovery beyond the discovery cut-off date. No supervision or intervention by the Court shall occur after that date without a showing of extreme prejudice.

F. Counsel are reminded to consult Rules 26(C) and 37 of the Federal Rules of Civil Procedure in the event of a discovery dispute.

G. Settlement

While no litigant is required to settle a dispute, each litigant is required to make a good faith effort to do so prior to trial. A "good faith effort" is, at the very least, comprised of an offer, a counter offer, and discussions with persons having settlement authority as to such offer and counter offer.

ALL SETTLEMENTS SHOULD BE SUBMITTED IN WRITING AND FAXED TO CHAMBERS AT (510) 879-3523 IMMEDIATELY!

H. Failure of a party to timely comply with these instructions may result in the imposition of sanctions pursuant to Rule 16(f) of the Federal Rules of Civil Procedure, including, but not limited to, the exclusion of evidence, imposition of monetary or non-monetary sanctions, or judgment being entered against the offending party.

A handwritten signature in black ink, appearing to read "Randall J. Newsome", is written over a horizontal line.

RANDALL J. NEWSOME
U.S. Bankruptcy Judge